

Attachment 1 to Exhibit M

22 PARTNERING, CLAIMS FOR ADJUSTMENT AND DISPUTES

22.1 Partnering

The Department and the Design-Builder, its Subcontractors, and other stakeholders, where appropriate, agree to utilize a formal partnering process on this Project. The partnering relationship will be structured to draw on the strengths of each organization to identify and achieve reciprocal goals. The objectives include effective and efficient Project performance and completion on schedule, within budget and in accordance with the Contract Documents.

Partnering does not change the legal relationship of the parties or modify the Contract, and does not relieve either party of any of the terms of the Contract. Partnering does not create a legal partnership between the parties. Rather, it is intended to denote a cooperative collaboration between the parties to efficiently accomplish the Work and complete the Contract.

The Department anticipates a partnering effort involving the executive management, Project management, Project staff and others. Any cost associated with effectuating partnering will be agreed to by both the Design-Builder and the Department and will be shared equally with no change in the Contract Amount. The Design-Builder shall pay all costs and submit paid invoices to the Department for 50 percent reimbursement.

To implement this partnering initiative as soon as possible, the Design-Builder's management personnel and the Department will initiate a partnering development seminar/team building workshop. The parties will make arrangements to determine attendees at the workshop, agenda of the workshop, duration and location. Persons required to be in attendance will be the Department's management personnel, the Design-Builder's Key Personnel and other Project field supervision personnel and the key management personnel of other major contractors. The parties shall jointly agree on a facilitator for the workshop.

During the workshop, the participants shall develop and sign the Project Partnership Charter. Follow-up workshops may be held periodically throughout the duration of the Work as agreed by the Design-Builder and the Department.

It is the intent of the parties that the dispute resolution provisions contained in this Section 22 shall apply only in the event that the normal Department and Design-Builder issue resolution efforts through partnering are not successful. The dispute resolution provisions set forth in Section 22.2 shall apply to all Disputes arising out of the Work that are not resolved by the parties through the partnering process, except as expressly provided to the contrary in the Contract Documents.

22.2 Dispute Resolution; General Provisions

All Disputes between the Design-Builder and the Department that have not been resolved by the parties through the partnering process shall be resolved as provided by this Section. It is not intended for the Department or Design-Builder to default on the normal responsibility to amicably and fairly settle their differences by indiscriminately assigning them to the DRB. It is intended that the DRB encourage the Department and the Design-Builder to resolve potential disputes without resorting to this appeal procedure.

22.2.1 Disputes; Disputes Governed by this Section; Priorities; Disputes Involving Utility Owners

A “Dispute” is any written request for relief in any form arising out of or relating to the Contract Documents, the Work, or the Project, including all contract claims, statutory claims, equitable claims, claims for extension of time, disagreements resulting from a change, a delay, a Change Order, any other written orders, or oral orders from the Department, including any direction, instruction, interpretation, or determination by the Department; provided, however, that this Section shall not apply to, and the DRB shall not have the authority to consider, claims that are not actionable against the Department by the Design-Builder; claims arising in tort; claims relating to the scope or applicability of indemnities provided under the Contract Documents; claims relating to matters within the sole discretion of the Department; claims for injunctive relief; claims against insurance companies; or claims which relate to an MUA or Supplemental Agreement or Utility Work, as described in this Section 22.2.1 . When a Dispute occurs, the Design-Builder shall pursue resolution through the process set forth in this Section.

Good faith participation in and completion of this dispute resolution process is a condition precedent to the filing of a civil action in a court of proper jurisdiction.

If a Dispute arises relating to a MUA or a Supplemental Agreement or the Utility Work there under, and the Utility Owner is a necessary or appropriate party to such Dispute, then such Dispute shall be resolved in the manner set forth in the applicable MUA, and the Design-Builder shall participate in such dispute resolution process as appropriate to resolve such dispute.

22.2.2 Overview of Process

The dispute resolution process shall involve the following steps, each of which must be taken before the next is available, provided, however, that the Department may submit claims to the DRB at any time and that the parties may, by mutual agreement, submit their dispute to mediation or other alternate dispute resolution process at any time:

1. If the parties are not able to resolve a Dispute through the partnering process, the Design-Builder shall provide a written protest and then the Design-Builder and the Department shall file position papers with the DRB, on the basis of which the DRB will render its initial decision.
2. Either party may file with the Project Director exceptions to the initial decision of the DRB within 30 days of service of the initial decision of the DRB.
3. If neither party files an exception to the initial decision of the DRB, the decision of the DRB becomes the final decision of the DRB, and the parties shall proceed with performance of the Contract in accordance with the decision.
4. Failure to file the exceptions described above shall result in a waiver by the Design-Builder of the

- right to seek relief in a court of proper jurisdiction.
5. Any party who files exception(s) to the initial decision of the DRB shall be afforded a formal hearing before the DRB in accordance with the rules of procedure adopted by the DRB, after which the DRB shall file its final decision.
 6. If either party is dissatisfied with the final decision of the DRB, it may file suit in a court of proper jurisdiction.
 7. All proceedings of the DRB shall be confidential.

22.2.3 Continuation of Work

At all times during this Dispute resolution process or any subsequent court proceeding, and at all times during the pendency of any Dispute with any other project contractor, the Design-Builder shall proceed with the Project Work diligently, without delay, in accordance with all provisions of the Contract Documents.

22.2.4 Records Related to Dispute

Throughout the course of any work that is the subject of any Dispute, the Design-Builder shall keep complete records of the extra costs and time incurred related to the Dispute. The Design-Builder shall permit the Department access to these and all other records needed for evaluating the disputed issue(s) as determined by the Department. These records shall be retained for a period of not less than six years from the date of resolution of the Dispute.

22.3 Procedure and Schedule for Dispute Resolution

22.3.1 Time Periods

Disputes shall be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation.

22.3.2 Written Protest and Submittal to Dispute Resolution Board

If the Design-Builder disagrees with anything required in any written order from the Department, including any direction, instruction, interpretation, rejection or modification of a proposed Change Order, or determination by the Department, and the parties have not been able to resolve the disagreement through the partnering efforts set forth in Section 22.1, the Design-Builder shall comply with the following procedures:

1. Within two weeks (or as mutually agreed by the Department and the Design-Builder) after the date on which the Design-Builder first becomes aware that the dispute, decision, action, or order to which the Design-Builder objects cannot be resolved through the partnering efforts of the parties, the Design-Builder shall meet with the Department and attempt to agree upon a statement of the disputed issue. Within one week after meeting with the Department (or as mutually agreed by the Department and the Design-Builder), the Design-Builder shall provide to the Department its position, including the information required in Section 16.4.2.
2. The Design-Builder also shall submit two separate sworn certifications in a form provided by or acceptable to the Department, executed by (a) an authorized representative with authority to bind the Design-Builder and with direct knowledge of the Dispute, and (b) the Project Sponsor, each certifying that: (i) the claim is made in good faith and in accordance with the terms of the Contract Documents; (ii) the amount claimed accurately reflects the appropriate adjustments in the Contract Amount and time, and includes all delay claims and costs sought by the Design-Builder; (iii) the supporting cost and pricing data are accurate, current and complete; (iv) the factual basis for the

claim is not falsely represented; and (v) except as expressly noted, separately accounted, and justified by citation to legal authority, the amount claimed includes no attorneys' fees, interest or other generally non-compensable costs.

3. In the event any such Claim or protest package, supporting statement and the required certifications are not filed within the time period set forth above, the Design-Builder shall be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of the Claim or protest, and shall be deemed to have waived the right to seek an extension of the Completion Deadlines with respect to any delay in the Critical Path which occurred prior to the date of the protest. The Design-Builder's failure shall also constitute a waiver of the right to bring the Claim or protest before the DRB. This waiver shall occur whether or not there is any showing of prejudice to the Department resulting from the delay in filing the protest.

22.3.3 Department Response

The Department shall provide its response to the Design-Builder's claim and shall deliver it to the Design-Builder and to the DRB, within 30 days of receipt of the Design-Builder's position, provided, however, that this time shall be extended by the time necessary in the Department's discretion to complete an audit as permitted under Section 25.3.5. The Department's response shall include a detailed statement setting forth each factual and legal defense to the claims, together with all documents that establish each defense. Any counterclaim shall set forth its nature, its factual and legal bases and all remedies sought, together with all documents that establish each counterclaim. If the Department has set forth a counterclaim, the Design-Builder may provide a detailed statement setting forth each factual and legal defense to the counterclaim, and shall submit it to the DRB and the Department within 21 days after receipt of the Department's statement of its counterclaim. Any response by the Design-Builder's to a Department counterclaim shall be limited to the counter-claim only and shall not be used as a rebuttal for any Department defenses.

22.3.4 Department Disputes

The Department shall have the right to bring a Dispute before the DRB at any time upon written notice to the Design-Builder, without the necessity of providing a written protest or claim, or following the procedures described in Section 22.3.2. In the event the Department brings a Dispute to the DRB, the procedures set forth in Section 22.6 relating to the Design-Builder Disputes shall apply; provided, however, the Department shall not be required to submit the certification referred to in Section 22.3.2(2), and the Design-Builder shall be required to submit such certification with respect to any counterclaims asserted by the Design-Builder.

22.4 Dispute Resolution Board

The DRB shall consist of three members. One member will be selected by the Department and approved by the Design-Builder. One member will be selected by the Design-Builder and Approved by the Department. A third member will be selected by the first two members and approved by both the Department and the Design-Builder. The third member will act as chairperson for all DRB Activities.

22.4.1 Experience of Dispute Resolution Board Members

It is desirable that all prospective DRB members be experienced with highway design and construction and environmental compliance, as well as with resolution of disputes involving

interpretation of design-build contracts. The goal in selecting the third member is to complement the dispute resolution experience of the first two and to provide leadership for the DRB's Activities. The third DRB member shall be a member of the Utah State Bar or retired judge.

22.4.2 Avoidance of Appearance of Conflict

It is imperative that potential DRB members show no partiality to either the Design-Builder or the Department, or have any conflict of interest.

1. No member shall be an Affiliate or otherwise have a financial interest in the Contract or in the outcome of any Dispute decided hereunder, except for the right to receive payment for serving on the DRB.
2. No member shall have been previously employed (or have his/her employer employed) by the Department, the Design-Builder or any Affiliate, within two years prior to the Proposal Due Date, except for fee-based consulting services on other projects which are disclosed to all parties, or have had financial ties to any party or Affiliate of any party to the Contract.
3. No member shall have had substantial prior involvement in the Project or relationship with any party or Affiliate of a nature which would be grounds for disqualification of a judge, or which could otherwise compromise his or her ability to impartially resolve Disputes.
4. No member shall accept employment with the Department, the Design-Builder or any Affiliate during the term hereof and for so long thereafter as any obligations remain outstanding under the Contract Documents, except as a member of other disputes boards.
5. No member shall discuss employment with the Design-Builder, any Affiliate or the Department or any consultants working on the Project during the term hereof and for so long thereafter as any obligations remain outstanding under the Contract Documents.

22.4.3 Submission of Disclosure Statements

Before their appointments are final, the first two nominated members shall submit complete disclosure statements for the approval of both the Department and the Design-Builder. Each statement shall include a resume of experience, together with a declaration describing all past, present and anticipated or planned future relationships to the Project and with all parties involved in the Contract, including disclosure of past or current professional or close personal relationships with the Design-Builder, any Affiliate, the Department or its consultants working on the Project, or with any key member of any such Person. The third DRB member shall supply such a statement to the first two DRB members and to the Department and the Design-Builder before his or her appointment is final.

22.4.4 Selection Process

Within 90 days after NTP1, the Department and the Design-Builder shall submit two names of prospective DRB members to each other for approval and provide information regarding the selected individual to the other party. The Department and the Design-Builder agree to meet as often as necessary to select four prospective DRB members between them (the "Pre-Approved DRB List").

At any time after the parties have agreed to the Pre-Approved DRB List, either the Department or the Design-Builder may request to the other in writing that the DRB be convened. Such request shall include its prospective DRB member, selected from the Pre-Approved DRB List. Within 30 days after receipt of such notice, the other party shall select its Dispute Resolution

Board member from the Pre-Approved DRB List. Immediately upon approval of the first two members, the two members shall begin selection of the third member from the Pre-Approved DRB List. The first two members shall ensure that the third member meets all of the criteria listed above. The third member shall be selected within four weeks after the first two members are notified to proceed with the selection. In the event of an impasse in selection of the third member, that member shall be selected by mutual agreement of the Department and the Design-Builder. In so doing, they may, but are not required to, consider the nominees offered by the first two members. If the Department and the Design-Builder cannot agree in the selection of the third member, then each party may submit a list of up to three candidates to a court of competent jurisdiction for judicial resolution of the selection of the third member.

22.4.5 Execution of Agreements

Promptly upon approval of the DRB members, the Department, the Design-Builder, and the individual DRB members shall enter into three-party agreements in the form of Exhibit M which set forth the terms and conditions that apply to the services to be provided by the members. The Department, the Design-Builder, and all three members of the DRB shall execute the DRB Agreement within four weeks after the selection of the third member.

22.4.6 Reconstitution of Dispute Resolution Board

The Department and the Design-Builder shall each have the right, one time only, to require appointments of a new DRB to resolve future Disputes, which right may be exercised at any time by delivery of notice to such effect to the other party and to the DRB. In such event, a new DRB Agreement, in the same form as Exhibit M, shall be executed establishing a new board, and except as otherwise mutually agreed by the Department and the Design-Builder, the work to be performed by the DRB shall be limited to Disputes submitted to the DRB before delivery of the notice requiring appointment of a new board.

22.5 Operation

The DRB shall formulate its own rules of operation, in accordance with the DRB Agreement.

22.5.1 Progress Reports

In order to keep abreast of design and construction development and progress, the members will be provided regular written progress reports and other relevant data from the Department and the Design-Builder.

22.5.2 Regular Meetings

Once convened, the DRB shall visit the Project and meet with representatives of the Department and the Design-Builder at least annually, and at more regular intervals if the Department and the Design-Builder agree that more regular meetings are necessary. The regular meetings shall be held at the job site. Each meeting shall consist of an informal round table discussion followed by a field review of the Project. The round table discussion shall be attended by selected personnel from the Department and the Design-Builder. The agenda shall generally include the following:

1. Meeting convened by the chair of the DRB.
2. Opening remarks by the Department.
3. A description by the Design-Builder of Work accomplished since the last meeting, current status

of the current Monthly Progress Schedule, schedule for future Work, potential Disputes and proposed solutions for any problems.

4. Discussion by the Department of the Work schedule as the Department perceives it, potential Disputes, and status of past Disputes.
5. Question and answer period as desired by DRB.
6. Set tentative date for next meeting.

If it is considered necessary by the parties, the Design-Builder will prepare minutes of regular meetings and circulate them for comments, revisions, and/or approval of all concerned. The field inspection shall cover all active segments of the work. The DRB shall be accompanied by representatives of both the Department and the Design-Builder.

22.5.3 No Ex Parte Communications

The parties are expressly prohibited from seeking advice from, consulting with, or discussing any aspect of an existing or potential Dispute with, any member of the DRB, unless duly authorized representatives of both parties agree otherwise in writing.

22.5.4 Compensation

Each party shall be responsible for payment of the DRB member selected by it and shall enter into a separate agreement for payment with its selected member. The Design-Builder shall enter into an agreement with the third DRB member and a certified court reporter, if desired by any party, and shall pay all costs and submit paid invoices to the Department for 50 percent reimbursement for the services and expenses of the third DRB member and the services of a certified court reporter.

22.6 Procedures Before Dispute Resolution Board

22.6.1 Impartiality of Dispute Resolution Board

The DRB shall fairly and impartially consider Disputes referred to it.

22.6.2 Dispute Resolution Board Procedure for Dispute Resolution

Within ten days after the date of receipt of the Department's answer or the Design-Builder's response to the Department's counterclaim, whichever occurs later; or upon written notice by the Department of a Dispute, the DRB shall set a date for a hearing on the Dispute.

The DRB may hold an informal proceeding prior to holding a hearing as set forth below if the DRB feels that it would be beneficial. If the DRB holds an informal meeting, however, it shall be recorded and the individuals making presentations shall be sworn in by the Chair of the DRB. At the conclusion of an informal proceeding, the DRB shall issue an informal recommendation to the parties based on the issues raised at the informal proceeding. The informal recommendation will have no binding effect whatsoever. Either party may request that the DRB proceed with a hearing as set forth below.

The hearing shall be held in accordance with the rules of operation established by the DRB pursuant to Section 22.5.

After the hearing on a Dispute is concluded, the DRB shall meet to formulate findings and conclusions upon all material issues of fact, law, or discretion presented by the record regarding

resolution of the Dispute. All DRB deliberations shall be conducted in private and shall be confidential. The DRB shall make a concerted effort to reach a unanimous decision. If this proves impossible, the dissenting member may prepare a minority report. The DRB shall base its findings and conclusions on the terms of the Contract Documents, established principles of law, statutes and regulations deemed by the DRB to be applicable, and the facts and circumstances of the Dispute as found by the DRB, and the information provided by the parties.

Within 30 days after the hearing (or such other time as requested by the DRB and as mutually agreed by the Design-Builder and the Department, but in no case to exceed 60 days), the DRB shall prepare an initial decision, which shall be served on the Design-Builder and the Department. The initial decision shall include a statement of findings and conclusions upon all the material issues of fact, law, or discretion presented by the record, and the appropriate order, sanction, relief or demand of the DRB.

Within 30 days after service of the DRB's initial decision, both the Department and the Design-Builder shall respond to the other and to the DRB in writing, signifying either acceptance or rejection of the Disputes Board's initial decision and filing any exceptions to the initial decision. If with the aid of the DRB's initial decision, the Department and the Design-Builder are able to resolve their Dispute, the Department will promptly process any required Contract changes.

If either party files an exception to the DRB's initial decision, the DRB shall conduct a formal hearing on the Dispute in accordance with its procedures and serve a final decision on the parties within 30 days after the hearing (or such other time as requested by the DRB and as mutually agreed by the Design-Builder and the Department, but in no case to exceed 60 days).

Within 30 days after service of the DRB's final decision, both the Department and the Design-Builder shall respond to the other and to the DRB in writing, signifying either acceptance or rejection of the Disputes Board's final decision. If with the aid of the DRB's final decision, the Department and the Design-Builder are able to resolve their Dispute, the Department will promptly process any required Contract changes.

22.6.3 Dispute Resolution Board Decisions Not Binding

Unless otherwise expressly agreed to by the parties, no decision or recommendation of the Dispute Resolution Board shall be binding on either party.

22.6.4 Dispute Resolution Board Decisions Not Admissible

Although both the Department and the Design-Builder should place great weight on the Disputes Board decisions and recommendations, no such decision or recommendation will be admissible as evidence in any subsequent litigation or other dispute resolution proceeding.

22.6.5 Dispute Resolution: Additional Requirements for Subcontractor Demands

For purposes of this Section 22, a "Subcontractor Demand" shall include any claim by a Subcontractor (including also any claims by a lower tier Subcontractor) against the Design-Builder that is actionable by the Design-Builder against the Department and arises from work, services or materials provided or to be provided under the Contract Documents. If the Design-Builder determines to pursue a Claim against the Department that includes a Subcontractor Demand, the following additional conditions shall apply:

1. The Design-Builder shall identify clearly in all submissions pursuant to this Section 22, that portion of the claim that involves a Subcontractor.
2. The Design-Builder shall include, as part of its submission pursuant to Section 22, a certification in a form provided by, or acceptable to, the Department by the Subcontractor's officer, partner or authorized representative with authority to bind the Subcontractor and with direct knowledge of the facts underlying the Subcontractor's claim. The Design-Builder also shall submit a Design-Builder's certification that: (i) the Design-Builder has investigated the basis of the Subcontractor's claims and has determined that all such claims are justified as to entitlement and amount of money and time requested, and has reviewed and verified the adequacy of all back-up documentation; (ii) the Subcontractor's claim has been prepared and submitted in accordance with the terms of the Contract Documents and the applicable Subcontract(s) and contains all information required by the Contract Documents and applicable Subcontract; and (iii) the Design-Builder has no reason to believe and does not believe that the factual basis for the Subcontractor's claim is falsely represented. Any claim under this Section 22 involving Subcontractor Work shall be considered incomplete if it is not accompanied by such analysis and certification.
3. At any DRB hearing on a Dispute that includes one or more Subcontractor claims, the Design-Builder shall require that each Subcontractor that is involved in the Dispute make available an authorized representative with actual knowledge of the facts underlying the Subcontractor's claim to assist in presenting the Subcontractor's claim and to answer questions raised by the DRB members or the Department's Representatives. Such Subcontractor assistance shall be limited to presenting the specific facts underlying the Subcontractor's claim and the answering of questions raised by the DRB members.
4. Failure of the Design-Builder to assert a Subcontractor's claim on behalf of any Subcontractor or Supplier at the time of submission of Design-Builder's Claims, as provided hereunder, shall constitute a release of the Department by the Design-Builder on account of such Subcontractor's claim.
5. The Design-Builder shall require in all Subcontracts that all Subcontractors and Suppliers of any tier: (i) agree to submit Subcontractor's claims to the Design-Builder in a proper form and in sufficient time to allow processing by the Design-Builder in accordance with this Section 22; (ii) agree to be bound by the terms of this Section 22 to the extent applicable to Subcontractor's claims; (iii) agree that, to the extent a Subcontractor's claim is involved, completion of all steps required under this Section 22 shall be a condition precedent to pursuit by the Subcontractor of any other remedies permitted by Law, including institution of a lawsuit against the Design-Builder; (iv) agree that any Subcontractor's claim brought against a bonding company, that also is actionable against the Department through the Design-Builder, shall be stayed until completion of all steps required under this Section 22; and (v) agree that the existence of a Dispute resolution process for Disputes involving Subcontractor's Demands shall not be deemed to create any claim, right or cause of action by any Subcontractor or Supplier against the Department.
6. Notwithstanding the foregoing, this Section 22 shall not apply to, and the DRB shall not have the authority to consider: (i) any Subcontractor claim between the Subcontractor(s) and the Design-Builder that is not actionable by the Design-Builder against the Department; (ii) any Subcontractor claim based on remedies expressly created by statute; (iii) any Subcontractor claim that is covered by insurance; or (iv) any Subcontractor claim that is actionable only against a bonding company.

22.7 Condition Precedent

Subject to Section 22.8, the Design-Builder's compliance with the provisions set forth in this Section 22 and the DRB's issuance of a final decision shall be a condition precedent to initiating any court proceeding in connection with the Contract.

22.8 Provisional Remedies

No party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy which may be necessary, and which is not otherwise available under this Section 22, to protect its rights, including temporary and preliminary injunctive relief, attachment, claim and delivery, receivership and any extraordinary writ.